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DEC 18 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of

Hasagawa et al.

Application No. 09/774,781

Filed: January 30, 2001

For: **SPIN-VALVE THIN-FILM MAGNETIC
ELEMENT AND METHOD FOR MAKING
THE SAME**

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:DECISION ON PETITION
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This is a decision on the petition filed August 4 2003, based on M.P.E.P. 711.03(c)(II), and pursuant to 37 C.F.R. § 1.181(a), to withdraw the holding of abandonment. No fee is required.

This application became abandoned for failure to timely file a proper reply to the Restriction mailed December 31, 2002. A Notice of Abandonment was mailed on June 27, 2003.

Petitioner alleges that the restriction mailed December 31, 2002 was not received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

(a) a statement from the practitioner stating that the Office communication was not received by the practitioner;

(b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,

(c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the records indicate that the restriction was properly mailed to the practitioner of record at the correspondence address at the time of mailing. Thus, there was no irregularity in mailing the Restriction on the part of the U.S. Patent and Trademark Office.

The allegation of non-receipt is supported by a statement by the petitioner attesting that the Office Action was not received at the prior or current correspondence address, and that a search of the contents of the file jacket and docket records reveal no evidence of receipt. Copies of the docket records have also been included to corroborate petitioner's claim.

The showing offered complies with the requirements of a successful petition to withdraw the holding of abandonment due to non-receipt of the Restriction as set forth above. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Accordingly, the petition is **GRANTED**.

The application file will be forwarded to the Technology Center's technical support staff for re-mailing of the Office Action, and the period of response will be re-set to run from the new mailing date thereof.



Mark Powell, Director
Technology Center 2600
Communications